

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.8170 OF 2006

Smt.Sunanda w/o Ramakant Desai and Others	.. Petitioners.
Vs.	
Ghesubhai Jain & Ors.	.. Respondents.

Mr.P.K.Dhakepalkar i/b Mr.A.A.Kocharekar for the
petitioners.
Mr.P.S.Dani i/b Kiran Jain & Co. for the respondents.

CORAM : D.B.BHOSALE, J.

DATED : 25TH JANUARY, 2007

P.C.:

. Heard learned counsel for the parties.

2. By this writ petition the petitioners have challenged the order dated 2.12.2006 passed on Obstructionist Notice No.69 of 2005 in Appeal No.211 of 2004 in R.A.E. & R Suit No.539/1003 of 1999 by which the notice at Exhibit-137 given by the petitioners' advocate to the obstructionist witness no.2 has been rejected on the ground that the witness is not party to the proceedings. I would not like to enter into a controversy raised in the writ petition about the directions given by the court to give such notice while witness was being cross examined. I am informed that the cross examination of the witness is

still going on. Keeping that in view I am satisfied that the following order shall meet the ends of justice:

. It is open for the petitioners to call upon the witness while in the witness box to produce the documents as per the admissions given in the cross examination. If such an application either oral or written is made in the court, the court shall allow the same and direct the witness to produce documents on the same day or on the adjourned date of hearing. However, further cross examination of the witness need not be stayed. If for any reason the witness does not produce the document/s despite directions of the court and if the document/s have any bearing on the merits of the case it is always open for the court to draw an adverse inference. Let me make it clear that I am not expressing any opinion on the merits of the case. The trial Court shall deal with the issue on merits in accordance with law.

. With these observations the writ petition is disposed of.

(D.B.Bhosale, J.)